No. 81-2132

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

ESTATE OF FRANK W. JOHNSON,
Deceased.

KENNETH CORY, as State Controller,
Petitioner,

vs.

GEORGIA CAMPBELL,
Objector and Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

CALIFORNIA INDIAN
LEGAL SERVICES
917 Third Street
Eureka, CA 95501

EITZEN & SCHAUB
816 Third Street
Eureka, CA 95501

Henry J. Sockbeson
ABINANTI & ASSOCIATES
935 Third Street
Eureka, CA 95501
(707) 443-8027

Attorney for Objector
and Respondent

QUESTION PRESENTED

The sole issue before the court is whether California has jurisdiction to impose an inheritance tax upon the intestate transfer of personal property and non-trust reservation real property from one reservation Indian to another.

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STATEMENT OF THE CASE

Frank W. Johnson, a member of the Hoopa Tribe of Indians, died intestate. His mother, Georgia Campbell, was his sole heir at law and was also a member of the Hoopa Tribe of Indians. Mr. Johnson had lived, worked and died on the reservation. His estate consisted of certain real property located within the boundaries of the Hoopa Valley Indian Reservation and also pension fund and life insurance benefits accrued during his employment on the reservation.

Decedent's nephew, Joe LeMieux, petitioned the Superior Court of California, Humboldt County, for authority to administer the estate. Bond was furnished, as required. Letters of Administration were issued pursuant to authority conferred by the California court. The court appointed inheritance tax referee reported inheritance tax due in the sum of $2,749. Objections were filed by Georgia Campbell, and were sustained by the court on the ground that the intestate transfer of the property described in the report was beyond the taxing jurisdiction of the State of

California and therefore not a transfer subject to inheritance tax. From the resulting Order of no tax due, the State Controller appealed. The Court of Appeal affirmed and the California Supreme Court denied the Controller's petition for a hearing.

REASONS FOR DENYING THE PETITION

1. The decision below is consistent with previous decisions of this court.

The issue raised in the petition is not new. States have, for hundreds of years, been attempting to extend their tax authority over Indians and their reservation lands.

Essentially, the cases deciding this issue have held that Indians and Indian property within an Indian reservation are not subject to state taxation except by virtue of expressed authority conferred upon the state by act of Congress. The issue has been raised and settled under this rule in several contexts. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973) (no authority to impose net income tax); Bryan v. Itasca County, 426 U.S. 373 (1976) (no authority to impose a personal property tax); Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976) (no authority to impose a cigarette tax); Warren Trading Post Co. v. Arizona Tax Commission,

380 U.S. 685 (1965) (no authority to impose a gross receipts tax).

The petition cites no acts of Congress which expressly grant the state the tax power it here seeks to assert and the decision below simply holds that no such statute exists. California now apparently concedes that no such act exists.

The well settled rule of construction which requires that Indian laws and treaties be construed liberally and doubts or ambiguities resolved in favor of the Indians has "particular force in the face of claims that ambiguous statutes abolish by implication Indian tax immunities". Bryan v. Itasca County, 426 U.S. at 392.

The decision of the court below needs not be reviewed since it is consistent with the holdings of this court.

2. Petitioner's argument has been addressed and rejected by this court.

California has jurisdiction over on reservation probate matters because

California was granted this authority by Congress when P.L. 83-280 (18 USC 1112) was passed. Bryan v. Itasca County held that although P.L. 83-280 granted states authority to adjudicate on reservation civil disputes, it did not grant the states any authority to impose a tax on those reservation Indians.

For example, California courts have jurisdiction to settle wage disputes between on reservation Indian employers and Indian employees, yet the State still lacks the necessary authority to impose an income tax on these reservation Indians. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973). Although California would have jurisdiction to hear a wage dispute, it is, nevertheless, without jurisdiction to impose a tax on the Indian's income derived from his on reservation employment.

In the instant case, California's courts may, on petition of an Indian's heirs, determine who may inherit. This mere grant of decisional authority, however, cannot be construed and has not been construed as a grant of taxing authority.

3. The issue raised is not substantial nor susceptible of repetition.

On June 8, 1982, California voters approved Propositions 5 and 6 (See Appendix). These measures repealed the California inheritance tax except insofar as a "pickup tax" would apply in an amount equal to the maximum federal credit allowable in certain situations. For all practical purposes, however, the California estate tax here in question is no longer applied by the State of California.

Although passage of Propositions 5 and 6 has no effect upon the instant case, the prospective application of the decision below in California is insignificant.

CONCLUSION

For the above stated reasons the Petition for a Writ of Certiorari should be denied.

Dated: July 16, 1982

Respectfully submitted,

ABINANTI & ASSOCIATES
935 Third Street
Eureka, California 95501

CALIFORNIA INDIAN LEGAL SERVICES
917 Third Street
Eureka, California 95501

EITZEN AND SCHAUB
816 Third Street
Eureka, California 95501

Attorneys for Objector and Respondent

By: HENRY J. SOCKBESON
HENRY J. SOCKBESON
ABINANTI & ASSOCIATES

ELECTION RESULTS

PROPOSITION 5

Gift and Inheritance Taxes
Initiative Statute

Approved June 8, 1982

Although Proposition 5 was approved by the voters, under the provisions of Stats.1981, c. 235, where two or more initiative measures were approved at the same election and were in conflict, the measure with the highest affirmative vote should prevail. Proposition 6 received a higher affirmative vote. See Proposition 6, post.

PROPOSITION 6

Gift and Inheritance Taxes
Initiative Statute

Approved June 8, 1982

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly repeals parts of the Revenue and Taxation Code and adds a new part thereto; therefore, new provisions proposed to be added are [underlined] to indicate that they are new.

PROPOSED LAW

Section 1. Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code is repealed.

[The text of Part 8 is also repealed by Proposition 5.]

Section 2. Part 9 (commencing with Section 15101) of Division 2 of the Revenue and Taxation Code is repealed.

[The text of Part 9 is also repealed by Proposition 5.]

Section 3. Part 8 (commencing with Section 13301) is added to Division 2 of the Revenue and Taxation Code, to read:

Part 8. Prohibition of Gift and Death Taxes

13301. Neither the state nor any political subdivision of the state shall impose any gift, inheritance, succession, legacy, income, or estate tax, or any other tax, on gifts or on the estate or inheritance of any person or on or by reason of any transfer occurring by reason of a death.

13302. Notwithstanding the provisions of Section 13301, whenever a federal estate tax is payable to the United States, there is hereby imposed a California estate tax equal to the portion, if any, of the maximum allowable amount of the Credit for State Death Taxes, allowable under the applicable federal estate tax law, which is attributable to property located in the State of California. However, in no event shall the estate tax hereby imposed result in a total death tax liability to the State of California and the United States in excess of the death tax liability to the Unites States which would result if this section were not in effect.

13303. The Legislature shall provide for the collection and administration of the tax imposed by Section 13302.

Section 4. This act shall become operative as of the date of passage hereof, and shall apply to the estates of those persons dying on or after such date, to transfers occurring by reason of a death occurring on or after such date, and to gifts made or completed on or after such date. Any liability for inheritance or gift tax incurred prior to such date shall be determined and enforced under the applicable law in effect on the date of death or date of completed transfer as fully and to the same extent as if the repeals of Parts 8 and 9 of Division 2 of the Revenue and Taxation Code had not been made.

Section 5. Except to provide for the collection and administration of the tax imposed by Section 13302 of the Revenue and Taxation Code in a manner not inconsistent with this act, the Legislature shall not amend or repeal this act other than by an enactment which becomes effective only when approved by a majority of the electors voting thereon in a statewide election.

Section 6. If any section, part, clause, or phrase hereof is for any reason held to be invalid, the remaining provisions of this act shall not be affected but shall remain in full force and effect.

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